

Order 97-11-23

Served: November 19, 1997



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 13th day of November, 1997

Application of

VISCOUNT AIR SERVICES, INC.

for an exemption from the revocation provisions
of 14 CFR 204.7

Docket OST 97-3048

ORDER GRANTING EXEMPTION

Summary

By this order, the Department of Transportation is granting the request of Viscount Air Services, Inc., for an exemption, until April 30, 1998, from the provisions of section 204.7 of the Department's rules (14 CFR 204.7) which provides for the revocation of the carrier's certificate authority if, following a cessation of all operations for which a fitness determination is required, it fails to have its fitness reestablished and resume such operations within a year of the cessation.

Background

Viscount holds certificates issued by Order 95-4-17 on April 11, 1995, authorizing it to engage in interstate and foreign charter air transportation of persons, property, and mail.¹ On October 27, 1996, the carrier, which had been operating since January 1996 as a debtor-in-possession under protection of the U.S. Bankruptcy Court, ceased all transportation operations. By letter dated October 30, 1996, we notified Viscount that, in accordance with the provisions of section 204.7, if it had not filed a notice of intent to resume operations along with updated fitness information, or requested an exemption from the revocation provisions of section 204.7 by October 27, 1997 (one year from the date of cessation), its certificate would be revoked. On July 30, 1997, we

¹ Viscount's certificates were originally issued by Orders 92-9-1 served September 1, 1992, and 92-11-17 served November 6, 1992, and were reissued by Orders 94-10-25 served October 20, 1994 (corporate reorganization), and 95-4-17 served April 11, 1995 (name change).

reminded Viscount that the date by which it must file a notice of intent to resume operations was approaching.

Request for Exemption

On October 24, 1997, Viscount filed in Docket OST-97-3048 a request for an exemption from the revocation provisions of section 204.7.² Viscount stated that it would require up to an additional six months, until April 30, 1998, to complete its FAA certification and other tasks preparatory to reinstituting operations. The company discussed its progress toward operational readiness and presented arguments in support of its request for additional time to complete that work.

Viscount states that on April 30, 1997, Air Oklahoma, Inc., acquired all of Viscount's outstanding common stock and its intangible corporate assets, including its operating certificates, free and clear of all liabilities, claims and interests, for \$215,000 from the bankruptcy estate.³ Viscount explains that, although it is now a wholly owned subsidiary of Air Oklahoma, the new owners plan to merge Viscount into Air Oklahoma, which will become the surviving entity and retain all of Viscount's personnel and certificate authority. The applicant states that Air Oklahoma, an Oklahoma corporation, is owned by the members of its board of directors and seven additional investors, all of whom are U.S. citizens.

Viscount asserts that the new owners did not become aware until October 1997 that the carrier's certificates of public convenience and necessity and FAA certificate were to be revoked for dormancy within a few weeks, and that the new management team requires additional time to submit evidence of its fitness and to accomplish the tasks associated with reinstituting operations, now anticipated to occur late in the first quarter or in the second quarter of 1998.

The carrier states that all pending compliance matters involving Viscount's prior operations were resolved with the FAA through the issuance of a consent order dated April 30, 1997. In addition, Viscount declares that it has been working with the FAA to determine what requirements it must meet to reinstitute operations, including obtaining approval of the persons named to fill such key technical positions as the Directors of Operations, Maintenance, Safety and Quality Assurance. Viscount notes that four of these individuals are former employees of the company. The carrier further declares that persons have been selected to fill the various senior managerial positions and the seats on the board of directors. Viscount contends that it has access to start-up funding and is

² Revocation of Viscount's certificate for dormancy is stayed pending action by the Department on the applicant's exemption request.

³ The applicant states that Air Oklahoma also acquired the Viscount name and trademark rights and other authorities and licenses, while the Viscount estate retained physical assets such as furniture, business equipment and accounts receivable. All of Viscount's aircraft had previously been returned to the lessors.

in negotiation to acquire aircraft.⁴ Additional operating capital is expected to be obtained through a private stock offering to be held after operations have resumed.

No answers to Viscount's application have been received.

Findings

We have carefully considered the information Viscount has provided as evidence of its progress toward operational readiness. We note that the carrier's new owners have reached an agreement with an investment banker to obtain necessary start-up capital. Moreover, Viscount has identified most of its key personnel, has a commitment for leased aircraft, and for the necessary physical infrastructure. We also note that the Department has not received any objections to the requested exemption.

Therefore, we find that it is in the public interest to grant the company's request for an exemption from the revocation provision of section 204.7 until April 30, 1998.⁵

ACCORDINGLY, acting under authority assigned by the Department in its Regulations, 14 CFR 385.12(b)(1):

1. We grant the request of Viscount Air Services, Inc., in Docket OST-97-3048 for an exemption from the revocation provisions of section 204.7 until April 30, 1998.
2. We will serve a copy of this order on the persons listed in Attachment A.

Persons entitled to petition the Department for review of this order, under 14 CFR 385.30, may file their petitions within 10 days of the date of service of this order.

⁴ In support of its assertions, Viscount supplied letters from (1) its investment banking firm outlining plans to obtain investment capital and other resources worth over \$50 million; (2) an aircraft lessor confirming that two B-737 aircraft will be available for lease by the end of the first quarter of 1998; and (3) the Special Assistant to the Governor of Oklahoma for Economic Development for Eastern Oklahoma and a member of the Owasso Economic Development Authority (who is an Air Oklahoma board member) stating that over \$25 million in State funds and in land and buildings will be made available by the community of Owasso.

⁵ We remind Viscount that, before any certificate authority awarded may be made effective, it must submit an "accident plan," pursuant to 49 U.S.C. 41113. Title VII of the Federal Aviation Reauthorization Act of 1996 (P.L. 101-264) added a new section 41113 to the Statute requiring certificated air carriers to develop and submit to the Department and the National Transportation Safety Board a plan ("accident plan") to address the needs of families of passengers in an accident involving an aircraft of the air carrier and resulting in a major loss of life. Section 41113(b) describes the specific contents of the plan, which covers passengers (including employees of the air carrier) and other victims. Section 41113(c) prohibits the Department from issuing a certificate after April 9, 1997, unless the applicant has filed a plan that meets the requirements of subsection (b).

The action taken in this order was effective when taken and the filing of a petition for review shall not preclude its effectiveness.

By:

JOHN V. COLEMAN
Director
Office of Aviation Analysis

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov/general/orders/aviation.html>.*

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